No. 94-989

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

SAM BROWN COMPANY,
Petitioner,

v.

JACOBS MANUFACTURING COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals properly exercised its discretion under Fed.R.App.P. 37 and declined to amend its mandate to provide instructions with respect to the allowance of interest, thereby rejecting Petitioner's claim to an additional $2 million in interest in this case in which Petitioner had already recovered $5.2 million from Respondent, including $2.7 million in punitive damages.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
STATUTE AND RULE INVOLVED	2
STATEMENT	2
A. Proceedings in the District Court	4
B. Proceedings in the Court of Appeals	5
C. Post-Appeal Proceedings	6
ARGUMENT	7
I. THERE IS NO CONFLICT IN THE CIRCUITS REGARDING THE ALLOWANCE OF INTEREST ON A JUDGMENT THAT WARRANTS RESOLUTION BY THIS COURT	7
II. THE FACTS OF THIS CASE ILLUSTRATE THE WISDOM OF THE RULE ACCORDING DISCRETION TO THE COURTS OF APPEALS TO DETERMINE THE DATE FROM WHICH POST-JUDGMENT INTEREST SHOULD BE COMPUTED	12
CONCLUSION	16

TABLE OF AUTHORITIES

CASES — Page

Affiliated Capital Corp. v. City of Houston, 793 F.2d 706 (5th Cir. 1986) 11, 13, 14
Briggs v. Pennsylvania R. Co., 334 U.S. 304 (1948) 6, 8-9
Brown & Williamson Tobacco Corp. v. Jacobson, 9 Fed.R.Serv. 630 (7th Cir. 1987) 10
Buck v. Burton, 768 F.2d 285 (8th Cir. 1985) 15-16
Chattem, Inc. v. Batley, 486 U.S. 1059 (1988) 7, 12
City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981) 14
Cordero v. De Jesus-Mendez, 922 F.2d 11 (1st Cir. 1990) 10, 11
DeLong Equipment Co. v. Washington Mills Electro Mineral Corp., 997 F.2d 1340 (11th Cir. 1993), *cert. denied*, 510 U.S. ——, 114 S.Ct. 604 (1993) .. 10, 11, 14
Graefenhain v. Pabst Brewing Co., 870 F.2d 1198 (7th Cir. 1989) 10
Loughman v. Consol-Pennsylvania Coal Co., 6 F.3d 88 (3rd Cir. 1993) 10
Lukhard v. Reed, 481 U.S. 368 (1987) 14
Smith v. National R.R. Passenger Corp., 856 F.2d 467 (2d Cir. 1986) 9, 11

STATUTES AND RULES

Fed. R. App. P. 37 ..... *passim*
28 U.S.C. 1254(1) 2
28 U.S.C. 1961(a) 2, 8
28 U.S.C. 2072 9

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. pp. 1a-15a) is reported at 19 F.3d 1259. The opinion of the district court (App., *infra*, p. 1a-38a) is reported at 792 F. Supp. 1520.

JURISDICTION

The court of appeals issued its mandate on July 28, 1994 (Pet. App., p. 16a). Pursuant to Fed.R.App.P. 37, Petitioner filed a timely motion for the court of appeals to exercise its discretion to amend its mandate to provide instructions with respect to the allowance of interest (App., *infra*, pp. 39a-44a). The order of the court of appeals denying petitioner's motion to amend the mandate was entered on August 18, 1994 (Pet. App., p. 18a). By

order dated September 8, 1994, the court of appeals denied petitioner's motion for reconsideration of its order of August 18, 1994 (Pet. App., p. 19a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE AND RULE INVOLVED

28 U.S.C. 1961(a). Interest

> Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry of the judgment, a a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment. The Director of the Administrative Office of the United States Courts shall distribute notice of that rate and any changes in it to all Federal judges.

Fed.R.App.P. 37. Interest on Judgments

> Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the district court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instuctions with respect to the allowance of interest.

STATEMENT

Petitioner seeks review of a discretionary act of the court of appeals declining to amend its mandate to provide instructions with respect to the allowance of interest. In so ruling, the court of appeals limited the allowance

of interest to Petitioner to the period commencing with its reinstatement of the jury verdict set aside by the district court. It thereby rejected Petitioner's claim to an additional $2 million in interest in a case in which Petitioner had already recovered $5.2 million from Respondent, including $2.7 million in punitive damages. The discretion exercised by the court of appeals in this case was contemplated by this Court in promulgating Fed.R.App.P. 37. Hence, the varied responses by the circuit courts of appeals to the allowance of interest where the court of appeals modifies or reverses the judgment of the district court are all within the bounds of the exercise of permissible discretion. There is accordingly no conflict of decisions requiring resolution by this Court.

The pertinent facts can be summarized as follows: In 1976, Respondent Jacobs Manufacturing Company (sometimes referred to as "Jacobs") approached Petitioner Sam Brown Company (sometimes referred to as "SBC") to serve as one of its distributors to promote and sell the Jake Brake, a truck engine retarder that supplements the function of standard wheel brakes. (Pet. App., p. 2a). Commencing in April 1976, SBC and Jacobs entered into the first of a series of one-year distributorship agreements over the next eight years. Each of these agreements expressly provided that: (1) Jacobs could sell its brakes directly to original equipment manufacturers; (2) Jacobs could terminate the distributorship without cause; and (3) there could be no oral modifications of the distributorship agreement. (App., p. 7a).[1] Jacobs' relationship with SBC progressed profitably for both parties until the early 1980s,

[1] SBC did not append the district court's opinion to its Petition asserting that the opinion is "irrelevant to the questions presented" (Pet., 2). However, we have reprinted it for the convenience of the Court because we believe that the facts set forth in the district court's opinion illuminate the background against which the court of appeals declined to exercise its discretion to provide instructions with respect to interest.

when recession engulfed the trucking industry and the patent on the Jake Brake expired. These two economic developments forced Jacobs to commence selling its products directly to manufacturers at the same price charged to distributors. The distributor agreements expressly reserved Jacobs' right to make direct sales and Jacobs so notified the distributors. (Tr. 984-85, 1066).[2] SBC was the sole distributor who objected to Jacobs' new practice and refused to accept Jacobs' new policies when announced. Thereafter, SBC placed a large order for Jake Brakes but refused to pay for this order, which it received and resold for more than $400,000 (Tr. 1204, 1214).

A. Proceedings in the District Court

Jacobs thereupon commenced this diversity action in the United States District Court for the Western District of Missouri to recover the amount SBC owed to Jacobs on its final order of Jake Brakes. In response, SBC not only denied liability but counterclaimed against Jacobs for fraudulent and negligent misrepresentation (App., p. 1a-2a). Notwithstanding the express provisions of the distributorship agreements, SBC contended that Jacobs had given it oral assurances that its distributorship would remain forever secure. The district court (Bartlett, J.) directed a verdict for Jacobs on the $400,000 debt, but the jury returned verdicts against Jacobs on SBC's counterclaim for nearly $2.5 million in compensatory damages and $2.7 million in punitive damages. That judgment was entered on September 12, 1990. (Pet. App., p. 20a).

On January 8, 1992, the district court set aside the jury's verdict and granted Jacobs' motions for JNOV (now "JAML") and new trial. (App., p. 2a). The court found no evidence that SBC could have reasonably relied on any of the alleged oral assurances. On the contrary, the court found "unchallenged evidence" that SBC signed another

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[2] Record citations are to trial testimony ("Tr.") and to the specific testimony of SBC's CEO Bernard Brown ("Brown Tr.").

distribution agreement even after it learned Jacobs was considering changes in its method of distribution (App., p. 8a). The court also vacated the $2.7 million punitive damage award because it was "the result of passion and not the result of the exercise of reasoned discretion." (App., p. 30a). Finding that the $2.7 million punitive award bore "no rational relationship" to any harm which Jacobs caused or was likely to cause, the court concluded that "the amount of punitive damages awarded by the jury was so unrealistic as to demonstrate irrational rather than rational behavior" (App., p. 30a). As the district court concluded (App., p. 38a):

> [T]he jury reached a seriously erroneous result in this case under the evidence presented to it. Emotion rather than reason appears to have directed this jury. In fact, defendant's case on its counterclaim appeared to be based to a large extent on appeals to emotion as a means of avoiding the terms of written agreements.

B. Proceedings in the Court of Appeals

The court of appeals reversed the district court's grant of both JAML and new trial and reinstated the jury's verdict[3] (Pet. App., pp. 1a-15a). Despite the district court's first-hand evaluation of the evidence, the demeanor of the witnesses and the conduct of the trial, the court of appeals discarded the district court's evidentiary findings that the jury responded emotionally rather than rationally (Pet. App., pp. 7a-10a). The court of appeals also concluded, without significant elaboration, that the $2.7 million punitive damage award was reasonably related to SBC's injury and did not "shock[] our constitutional sensibilities" (Pet. App., pp. 11a-12a). Finally, the court of appeals reversed the district court's grant of new

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[3] The court of appeals affirmed the district court's grant of JAML on Jacobs' complaint for the $400,000 debt (Pet. App. p. 15a).

trial, even though it did not find that the district court abused its discretion in awarding a new trial. (Pet. App. 12a-14a). Instead, the court of appeals undertook a *de novo* review of the new trial grant which afforded no deference to the district court's first-hand observation of the trial. (Pet. App. 12a-14a).

The court of appeals issued its opinion on March 28, 1994 (Pet. App., p. 17a). The opinion mandated entry of judgment on the jury's original verdict, but it did not contain instructions with regard to the allowance of interest (Pet. App., p. 15a).

C. Post-Appeal Proceedings

Jacobs timely petitioned the court of appeals for a rehearing and also suggested rehearing *en banc*. On June 27, 1994, the court denied both the petition and the suggestion, with two judges dissenting. On July 28, 1994, the clerk of the court of appeals issued the mandate to the clerk of the district court, whereupon SBC moved the court of appeals to recall its mandate to provide for post-judgment interest from the original entry of judgment on the jury verdict (App., p. 39a). In its motion, SBC urged the court of appeals to "exercise its discretion" under Fed.R.App.P. 37 and provide instructions to award post-judgment interest from the date of the original judgment in 1990 (App., p. 39a). SBC did not argue, or cite any authority for the proposition, that the court of appeals was required as a matter of law to award interest from that date (App., p. 40a-43a).

On August 18, 1994, the court of appeals denied SBC's motion (Pet. App. 18a), and on August 25, 1994 the district court entered judgment on the court of appeals' mandate reinstating the jury's $5.2 million verdict. (Pet. App. 25a) Under the rule of *Briggs v. Pennsylvania R. Co.*, 334 U.S. 304 (1948), which prescribes that district courts may not in any way deviate from appellate court mandates, the district court could only award

interest from the entry of judgment by the court of appeals (Pet. App. 22a-24a). On September 8, 1994, the court of appeals denied SBC's motion for reconsideration of its order declining to recall the mandate (Pet. App. 19a).[4]

ARGUMENT

I. THERE IS NO CONFLICT IN THE CIRCUITS REGARDING THE ALLOWANCE OF INTEREST ON A JUDGMENT THAT WARRANTS RESOLUTION BY THIS COURT

The court of appeals properly exercised its discretion in this case and declined to amend its mandate to provide instructions for the allowance of interest. As a result, it rejected Petitioner's claim for an additional $2 million of interest in a case in which Petitioner had already recovered $5.2 million from Respondent, including $2.7 million in punitive damages. This exercise of discretion by the court below, and similar exercises of discretion by the other appellate courts, does not constitute a conflict of decisions that requires resolution by this Court. Indeed, the Court concluded as much in denying review in *Chattem, Inc. v. Bailey*, 838 F.2d 149 (6th Cir. 1988), *cert. denied*, 486 U.S. 1059 (1988), where the petitioner likewise claimed the existence of a conflict. Since the Court considered the petition in *Chattem, Inc.*, the courts of appeals have properly continued to exercise their varying discretion with respect to the allowance of interest.

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[4] On September 26, 1994, Jacobs petitioned this Court for a writ of certiorari (No. 94-653) seeking review of the court of appeals' reinstatement of the punitive damages award. In its petition, Jacobs argued that the court of appeals had departed from this Court's settled rule that the district courts have broad discretion to order new trials, and thereby violated the standards for procedural due process required by this Court's decisions assessing the constitutionality of punitive damage awards. At that time, SBC did not file a cross-petition on the interest issue or raise that issue in its Brief in Opposition to Jacobs' petition. On November 7, 1994, this Court denied Jacobs' petition.

Accordingly, there have been no developments or new evidence in the last seven years that rise to the level of a conflict warranting review by this Court.

Congress has long provided that "Interest shall be allowed on any money judgment in a civil case recovered in a district court." 28 U.S.C. 1961(a). Absent an appeal, it is clear that interest runs from the date of the judgment of the district court. Moreover, if the court of appeals affirms the judgment of the district court, the rule is likewise clear that interest shall be payable from the date the judgment was entered in the district court.

Almost 50 years ago in *Briggs v. Pennsylvania R. Co.*, 334 U.S. 304 (1948), this Court considered the question of post-judgment interest in a case in which the court of appeals had reversed the judgment of the district court and directed the entry of a money judgment. In *Briggs*, the jury returned a verdict for the plaintiff in the amount of $42,500. Subsequently, the district court dismissed the plaintiff's complaint for lack of jurisdiction. 334 U.S. at 305. On appeal, the court of appeals reversed the district court's jurisdictional ruling and ordered entry of judgment on the verdict. However, the court of appeals made no provision in its mandate for interest on the judgment. *Id.*

Thereafter, the district court entered the judgment and ordered that interest be paid from the date of the original verdict. The defendant sought review of the district court's award of interest. On appeal, the court of appeals ruled that the interest awarded by the district court was improper because it deviated from the mandate of the court of appeals. In so holding, the court of appeals applied the settled rule that an inferior court has no power or authority to deviate from the mandate issued by an appellate court. This Court affirmed, likewise stating that it was "clear that the interest was in excess of the terms of the mandate and hence was wrongly included in the District Court's judgment and rightly stricken out by the

Circuit Court of Appeals." *Id.* at 306. In light of this ruling, this Court further observed that the plaintiff was not entitled to interest because she had not moved to amend the mandate but simply sought to have it disregarded. The Court therefore found it unnecessary to address the question as to the computation of interest in a case where the court of appeals reverses the judgment of the district court and directs the entry of a money judgment.

In the wake of *Briggs*, it was understood that when the court of appeals' mandate provides no instructions with respect to the allowance of interest in a case in which it reverses or modifies the judgment of the district court, interest can only run from the entry of judgment by the district court on remand. In such a case, the district court may not deviate from or otherwise amend the mandate of the court of appeals directing entry of a money judgment.

Twenty years later, pursuant to the Rules Enabling Act, 28 U.S.C. 2072, this Court promulgated Fed.R.App. P. 37, in order to call the *Briggs* rule to the attention of the bench and bar. Thus, the second sentence of Rule 37 provides: "If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with regard to the allowance of interest." As the Advisory Committee Notes to Rule 37 state, "the second sentence of [Rule 37] is a reminder to the court, the clerk and counsel of the *Briggs* rule." In promulgating Rule 37, and thereby permitting the courts of appeals to give "instructions" regarding the allowance of interest, this Court accorded the appellate courts broad discretion to determine the proper date from which interest should be computed based upon the equities of each case. As the Second Circuit observed in *Smith v. National R.R. Passenger Corp.*, 856 F.2d 467, 473 (2d Cir. 1988), Rule 37 "gives appellate courts discretion to decide the [compu-

tation of interest] issue on a case-by-case basis." While the courts of appeals would possess such discretion even in the absence of a rule, Rule 37 reminds the courts of appeals of the *Briggs* decision that when appellate mandates contain no instructions with respect to the allowance of interest, interest will run only from the entry of judgment by the district court on remand.

As one would expect under any rule conferring discretion, the courts of appeals have exercised their discretion under Rule 37 differently. Some circuits have decided that, where they reverse or modify a district court's decision and direct entry or reinstatement of an earlier judgment, they will ordinarily award interest from the initial entry of judgment in the district court. *See e.g.*, *DeLong Equipment Co. v. Washington Mills Electro Mineral Corp.*, 997 F.2d 1340 (11th Cir. 1993), *cert. denied*, 510 U.S. ——, 114 S.Ct. 604 (1993); *Cordero v. De Jesus-Mendez*, 922 F.2d 11 (1st Cir. 1990).[5] However, none of these circuits has adopted an absolute rule that interest accrues from the original judgment.[6]

[5] SBC cites (Pet. 15) *Graefenhain v. Pabst Brewing Co.*, 870 F.2d 1198 (7th Cir. 1989) for the proposition that the Seventh Circuit has likewise adopted the rule that interest accrues from the date of the original judgment. The Seventh Circuit, however, has adopted no such rule. In *Brown & Williamson Tobacco Corp. v. Jacobson*, 9 Fed.R.Serv. 630 (7th Cir. 1987), the Seventh Circuit explicitly approved the "case-by-case approach" an "inherent outgrowth of Rule 37, which grants the appellate court discretion with respect to allowing interest" (*id.* at 632). There, the Seventh Circuit held that on the facts of the case, post-judgment interest should run from the date of its mandate.

[6] *But cf. Loughman v. Consol-Pennsylvania Coal Co.*, 6 F.3d 88 (3rd Cir. 1993). There, the plaintiffs sued a group of coal and railroad companies for fraud in the purchase of land and recovered large compensatory and punitive damage awards. After considerable post-trial litigation in which the jury awards were vacated, reinstated and appealed several times, the Third Circuit held that under the particular factual circumstances of the case, post-judgment interest should run from the original judgment on the verdict. The court suggested in *dicta* that where a court of appeals

By contrast, other circuits determine the date from which interest runs based on the particular equities of each case. *See e.g., Affiliated Capital Corp. v. City of Houston,* 793 F.2d 706 (5th Cir. 1986); *Smith, supra,* 856 F.2d 467 (2d Cir. 1988). Contrary to SBC's assertion (Pet. 12-18), these different responses do not represent a "conflict" in the circuits. Rather, they simply reflect varied results fashioned after due regard for the underlying facts of the case, a process which is exactly what this Court contemplated would occur in promulgating Rule 37.

Indeed, Petitioner acknowledged the discretion of the court of appeals with regard to interest in its motion below to amend the mandate. In that motion, Petitioner urged the court of appeals to "exercise its discretion" to allow post-judgment interest from the original entry of judgment (App., p. 39a), and referred several times to the court's "discretion" regarding such interest. (App., p. 41a) Now, however, Petitioner has shifted ground and asserts that the question does not reside in the discretion of the courts of appeals, but that there is a conflict in the circuits. As Petitioner now sees the matter (Pet. 12-13), those circuits which have awarded interest from the original judgment have held that they are required to do so "as a matter of law." But none of the cases which Petitioner cites so holds that post-judgment interest must run from a particular date as a matter of law. On the contrary, those decisions correctly acknowledge either explicitly or implicitly that Rule 37 does not lay down a rigid rule but leaves the interest determination to the sound discretion of the courts of appeals. *DeLong,* 997 F.2d at 1342; *Cordero,* 922 F.2d at 16-18. And that is precisely what the court of appeals did in this case in declining to amend its mandate.

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reverses a district court's grant of judgment n.o.v. and reinstates the original judgment in its entirety, post-judgment interest runs from the first judgment (*id.* at 98).

II. THE FACTS OF THIS CASE ILLUSTRATE THE WISDOM OF THE RULE ACCORDING DISCRETION TO THE COURTS OF APPEALS TO DETERMINE THE DATE FROM WHICH POST-JUDGMENT INTEREST SHOULD BE COMPUTED

In the nearly 50 years since *Briggs,* the courts of appeals have, on numerous occasions, exercised their discretion to determine the proper starting date for the computation of interest based on the equities of each case. The circuits have exercised their discretion responsibly; otherwise, this Court would not have reaffirmed that discretion in Rule 37 and denied certiorari seven years ago in *Chattem, Inc. v. Bailey, supra,* where the petitioner made a similar allegation of a conflict. Moreover, the facts of this case illustrate the wisdom of the rule according discretion to the courts of appeals with respect to interest.

Following the trial below, the district court confirmed the propriety of Jacobs' complaint against SBC by directing a verdict in favor of Jacobs. The jury then surprised the district court by awarding SBC nearly $5.2 million on SBC's counterclaim, including $2.7 million in punitive damages. After careful consideration, the district court found those damages to be entirely unwarranted; accordingly, it set aside the jury verdict and awarded Jacobs JAML or, in the alternative, a new trial. The court of appeals disagreed, finding enough evidence to support the jury's verdict. But the court of appeals was necessarily aware of the district court's belief that the jury's verdict was "seriously erroneous," and that the jury was directed by "emotion rather than reason." Given the equities of the situation, it was well within the discretion of the court of appeals to decline to recall its mandate and thereby refuse to award an additional $2 million in interest to SBC. While the court did not elaborate its reasoning, its denial of SBC's motion to exercise its discretion and amend its mandate shows that it was unwilling to impose an additional $2 million liability upon Jacobs in view

of the judgment against Jacobs of $5.2 million, including a $2.7 million windfall to SBC in punitive damages.

The Fifth Circuit reached the same conclusion in a case involving very similar equities. In *Affiliated Capital, supra,* 793 F.2d 706, an unsuccessful cable television franchise applicant sued the City of Houston and the successful applicants for unlawful conspiracy under the antitrust laws. As in the instant case, the plaintiff won a jury verdict, the district court granted JNOV, and the court of appeals reversed the JNOV. 793 F.2d at 708. The plaintiff then moved for post-judgment interest to run from the date of the original judgment. *Id.* The court of appeals denied this motion, and denied the very request which SBC makes to this Court: for a "hard and fast" rule requiring that post-judgment interest accrue from the earlier judgment. *Id.* As the Fifth Circuit stated: "Such a 'rule' ignores the fact that the 'equities' vary from case to case." *Id.* at 710. The court observed that the plaintiff's victory was "far from clear-cut" because, *inter alia,* the opinion reinstating the verdict "rested merely on the conclusion that the evidence was *sufficient*" to support the verdict. *Id.* at 711-712 (emphasis in original). More importantly, the court noted that the trebled antitrust damages would more than compensate plaintiff's loss, and hence that the failure to award interest from the earlier date would not undermine the plaintiff's appropriate compensation. *Id.* at 712.

Here, too, the court of appeals' reinstatement of the jury's verdict rested solely on its finding that the evidence was adequate to support the verdict, despite the district court's contrary conclusion. Moreover, the punitive damage award of $2.7 million far exceeds the interest which SBC seeks from the date of the original judgment (approximately $2 million). Therefore, as in *Affiliated Capital,* the failure to recover interest from the earlier date will not diminish SBC's compensatory award. Given the similar equities in *Affiliated Capital,* the court of appeals below properly reached the same result: the $5.2 million

verdict was "punishment enough" for Jacobs. Jacobs should not be forced to pay another $2 million in interest, particularly where that interest would represent an absolute windfall above and beyond SBC's compensatory damages.

Indeed, the reasoning set forth in *Affiliated Capital* illustrates a significant problem with the "hard and fast" rule which SBC espouses. SBC argues that the failure to award interest from the original entry of judgment would afford a "windfall" to Jacobs, and a "penalty" to SBC, by virtue of the erosion in the value of the original money judgment. Pet. 14, quoting *DeLong*, *supra*, 997 F.2d at 1342. On the contrary, as the court below and the Fifth Circuit in *Affiliated Capital* recognized, there would be a windfall that would accrue to SBC if interest is awarded from the original judgment. By their very nature, punitive damages are a windfall to prevailing plaintiffs. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 267 (1981); *Lukhard v. Reed*, 481 U.S. 368, 389 (1987) ("Punitive damages, in the exceptional case in which they are awarded, are a windfall to the plaintiff rather than compensation." (Powell, J., dissenting)).

Thus, properly considered, the court of appeals' rejection of SBC's claim to additional interest does not work an erosion upon its compensatory award. Given the windfall nature of punitive damages, SBC seeks what is essentially interest on a windfall—which represents an additional windfall. Pursuant to Rule 37, a court of appeals may properly decide to exercise its discretion to award interest from the original judgment in a case involving no punitive damages to the plaintiff, in order to preserve the value of the plaintiff's compensatory damage award. However, where, as here, a plaintiff receives windfall punitive damages in addition to compensatory damages, under circumstances that the district court found questionable, the court of appeals may properly conclude that the equities of the case dictate that the plaintiff should not receive —and the defendant should not have to pay—the addi-

tional windfall of interest. The "hard and fast" rule urged by SBC would prevent the courts of appeals from distinguishing between these very different cases, and generally from undertaking the *Affiliated Capital* balance-of-equities analysis in assessing post-judgment interest that is contemplated by Rule 37.

Perhaps the most compelling evidence to support the wisdom of according discretion to the courts of appeals regarding post-judgment interest comes from an earlier decision of the court of appeals which decided the instant case. SBC asserts that in *Buck v. Burton*, 768 F.2d 285 (8th Cir. 1985), the court of appeals adopted the "hard and fast" rule which SBC now advocates. In fact, *Buck* retained the balance-of-equities approach. In *Buck*, as here, the court of appeals reversed the district court's grant of JNOV and reinstated the verdict. In *Buck*, however, the court awarded post-judgment interest from the date of the original judgment. In so ruling, the court stated (768 F.2d at 287):

> *The equities of the situation dictate* that the successful plaintiff receive interest on the loss of the use of the money judgment from the date damages were ascertained—that is, the date upon which plaintiff's original judgment should have been entered had the district court not erroneously granted judgment n.o.v. 768 F.2d at 287 (emphasis added).

SBC contends (Pet. 17) that, in the instant case, the Eighth Circuit has abandoned *Buck* and "is now uncertain what its position should be . . . ." But the court in *Buck* gave no indication that the plaintiff in that case recovered punitive or other windfall damages, and expressly stated that the award of interest from the original judgment was based on "the equities of the situation." 768 F.2d at 287. That result is entirely consistent with the decision below, in which SBC recovered a substantial punitive damage award. In these circumstances, the equities of the situation dictate that Jacobs should not be compelled to pay

another $2 million in post-judgment interest. Thus, *Buck* amply confirms the injustice inherent in the rigid rule which SBC proposes, and the wisdom of the settled, discretionary approach which this Court adopted in promulgating Rule 37.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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